



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

SEP 14 2016

Ms. Tari Moore  
Cecil County Executive  
County Administration Building  
200 Chesapeake Blvd., Suite 2100  
Elkton, MD 21921

Re: Docket No. CWA-03-2016-0205DN  
Administrative Order for Compliance

Dear Ms. Moore:

The United States Environmental Protection Agency ("EPA") has reviewed your compliance with the Federal Clean Water Act ("CWA") with respect to the implementation of your Municipal Separate Storm Sewer System ("MS4") Permit No. MDR055500. Enclosed with this letter is a document entitled Findings of Violation and Order for Compliance ("Order") issued pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a). This document contains findings that the Cecil County Government has violated section 301 of the Act, 33 U.S.C. § 1311, and requires Respondent to follow all requirements of the Order. You should carefully read the contents of the enclosed Order, and communicate to each responsible official, agent, or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief.

If you require any information or assistance regarding this matter, please contact Mr. Michael Greenwald, NPDES Enforcement Branch, (215) 814-2398.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", is written over a horizontal line.

Jon M. Capacasa, Director  
Water Protection Division

Enclosure

cc: Sharon Talley (MDE)



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**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

Cecil County  
County Administration Building  
200 Chesapeake Blvd., Suite 2100  
Elkton, MD 21921

Respondent

FINDINGS OF VIOLATION

AND

ORDER FOR COMPLIANCE

Docket No. CWA-03-2016-0205DN

**I. STATUTORY AND REGULATORY BACKGROUND**

1. EPA has made the following findings of fact and issues this Administrative Order ("Order") pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") under Section 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

2. Section 309 of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such section or requirement. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

3. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and

conditions as prescribed in the permit. Section 402(b) of the Act provides for the authorization of state programs to issue NPDES permits.

4. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.

5. “Stormwater” is defined as “stormwater runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).

6. The term “municipal separate storm sewer system” (“MS4”) includes, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).

7. The term “small municipal separate storm sewer system” or “small MS4” means “all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water. . . .; [and] (ii) Not defined as ‘large’ or ‘medium’ municipal separate storm sewer systems.” 40 C.F.R. § 122.26(b)(16).

8. Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder. Pursuant to 40 C.F.R. § 122.26(a)(9)(i), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.

## **II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW**

9. Cecil County (“Respondent” or “the County”) is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

10. Respondent is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

11. At all times relevant to this Order, Respondent has owned and/or operated a MS4 as that term is defined in 40 C.F.R. § 122.26(b)(8).

12. Respondent's MS4 is located within Cecil County, Maryland which is an urbanized area as determined by the 2000 Decennial Census by the Bureau of the Census, and requires an NPDES permit to discharge storm water pursuant to 40 C.F.R. §122.32(a)(1).

13. The County encompasses a total area of approximately 418 square miles according to the 2010 Census; its population is estimated at 101,108 people according to the 2010 Census.

14. The County is a "small MS4" within the meaning of 40 C.F.R. § 122.26(b)(16).

15. Respondent's MS4 discharges stormwater to Octoraro Creek, North East River, and Big Elk Creek, which flow into the Chesapeake Bay. Respondent's MS4 also discharges to the Christina River, which is a tributary of the Delaware River. Octoraro Creek, North East River, Big Elk Creek, Christina River, and their associated tributaries are "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

16. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the State of Maryland to issue General NPDES permits in 1991.

17. On April 14, 2003, MDE issued the General Discharge Permit No. MDR055500 ("Permit"), that authorized the discharge of stormwater from small MS4s, generally defined as MS4s located in an incorporated place with a population less than 100,000. *See* 40 C.F.R. § 122.26(b). On June 13, 2003, the County applied for permit coverage under the General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (No. 03-IM-5500). Although the Permit was set to expire on April 14, 2008, it has been administratively extended by MDE until a new permit is issued.

18. On April 21-22, 2015, EPA and its representatives performed a review of the County's MS4 system and program.

19. At the review, it was observed that the County had not complied with certain requirements of the permit as described below.

### **Count 1: Failure to Inspect all Stormwater Management Systems**

20. Permit Part III.E (Post Construction Stormwater Management) of the County's permit requires the County to comply with the Maryland Environment Article, Title 4, Subtitle 2, Annotated Code of Maryland, which "establishes a statewide stormwater management program.

This statute, coupled with COMAR, requires that stormwater management for new development and redevelopment be addressed for any proposed project that disturbs 5,000 square feet or more of earth.” Further, the Permit requires that the Permittee comply with the methods and practices found in the 2000 Maryland Stormwater Design Manual, Volumes I &II.

21. COMAR 26.17.02.11 (Inspection and Maintenance) requires the County to inspect all stormwater management systems during the first year of the structure’s operation and at least once every 3 years after that. Further COMAR 26.17.02.11.B requires the County to maintain all inspection records.

22. At the time of the 2015 EPA Inspection, and as evidenced in the County’s response to the inspection report, of the 395 stormwater management systems (“SWMSs”) to inspect, only 193 are within the County’s urbanized area. Of those, 62 were indicated by the County to not have been inspected within the 3 year time period required by the permit.

23. Inspections of SWMSs is required in order to assess the need for proper operation and maintenance, and, if necessary, the need for enforcement to ensure the correct implementation of those stormwater best management practices (“BMPs”). The Permittee’s failure to inspect within the timeframe specified by the permit is a violation of Permit Part III.E and a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 2: Failure to Inspect all Stormwater Management Measures to Ensure Proper  
Constructs and Maintenance**

24. Permit Part III.E (Post Construction Stormwater Management) of the County’s permit requires the County to comply with the Maryland Environment Article, Title 4, Subtitle 2, Annotated Code of Maryland, which “establishes a statewide stormwater management program. This statute, coupled with COMAR, requires that stormwater management for new development and redevelopment be addressed for any proposed project that disturbs 5,000 square feet or more of earth.” Further, the Permit requires that the Permittee comply with the methods and practices found in the 2000 Maryland Stormwater Design Manual, Volumes I &II.

25. COMAR 26.17.02.03 states that an acceptable stormwater management program will include: 1) Stormwater management planning and approval processes that provide stormwater management for every land development subject to COMAR 26.17.02,

implementation of environmental site design ("ESD") to the maximum extent practicable, and the ability and the information necessary to review adequately proposed installation and maintenance measures for stormwater management; 2) Inspection and enforcement procedures that ensure the proper construction and maintenance of approved stormwater management measures.

26. At the time of the 2015 EPA Inspection, the County provided a list of 119 unique ESDs and was unable to provide any records of inspections of the ESDs.

27. Inspections of ESDs is required in order to assess operation and maintenance practices, and, if necessary, the need for enforcement to ensure the correct implementation of those stormwater BMPs. The Permittee's failure to inspect ESDs as specified by the permit is a violation of Permit Part III.E and a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

### **III. ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2016, pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED, pursuant to Section 309(a) to do the following:

28. Within seven (7) days of the effective date of this Order, the Respondent shall submit to EPA a certification, by a responsible company official, of Respondent's intent to comply with this order.

29. Within thirty (30) days of the effective date of this Order, provide to EPA a schedule for inspecting all SWMs that are in operation that 1) have not been inspected in their first year of operation and 2) have not been inspected within the past 3 years.

30. Within thirty (30) days of the effective date of this Order, provide to EPA a schedule for inspecting all ESDs that are in operation that have not been inspected.

31. Within thirty (30) days of the effective date of this Order, provide to EPA a plan to ensure all future inspections required by the County are performed in a manner that is compliant with the conditions of the Permit.

32. All documents required by Paragraphs 28 through 31 of this Order shall be accompanied by a certification signed by a responsible municipal officer, as defined in 40 CFR § 122.22(d), that reads as follows:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Signed \_\_\_\_\_  
Title \_\_\_\_\_

All documents required herein shall be submitted to:

Michael Greenwald  
Enforcement Officer  
NPDES Enforcement Branch  
Mail Code (3WP42)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

#### **IV. GENERAL PROVISIONS**

33. Issuance of this Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to enforce the provisions of this Order, following its effective date (as defined below).

34. This Order does not constitute a waiver or modification of the terms or conditions of any MS4 permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

#### **V. OPPORTUNITY TO CONFER**

35. Within fifteen (15) days upon receipt of this Order, Respondent is invited to confer with EPA about the findings and conclusions and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to EPA's determination. If such a conference is desired, Respondent should contact:

Michael Greenwald  
NPDES Enforcement Branch (3WP42)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
greenwald.michael@epa.gov  
(215) 814-2398

#### **VI. JUDICIAL REVIEW**

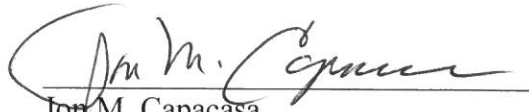
36. Respondent may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

#### **VII. EFFECTIVE DATE**

37. This ORDER will become effective 15 days after receipt, unless modified or withdrawn.

SO ORDERED:

Date: 9/13/16

  
Jon M. Capacasa  
Director, Water Protection Division  
U.S. EPA Region III

